

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 329 OF 2026
WITH
INTERIM APPLICATION NO. 2461 OF 2026

Shakir Hussain Qureshi & Ors.

Appellants
.. (Org. Plaintiffs)

Versus

Munish Kumar Mahendra Kumar Gupta & Ors.

Respondents
.. (Org. Defendants)

-
- Mr. Samir Ashok Kumbhakoni, Advocate for Appellants

.....
CORAM : MILIND N. JADHAV, J.

DATE : APRIL 17, 2026

P. C.:

1. Not on board. Mentioned by way of filing a praecipe dated 17.04.2026.
2. Heard Mr. Kumbhakoni, learned Advocate for Appellants.
3. For the sake of convenience, the parties shall be referred to in terms of their status before the Trial Court.
4. Exh. 5 Application filed by Plaintiffs stands rejected by virtue of the impugned order dated 21.012026, copy of which is appended at Exh. L, page Nos. 312-320 of Appeal from Order (AO). There is categorical finding which is returned in paragraph No. 25 which records the fact that despite the status of the suit land being pending in Darkhast No. 44/2010, Plaintiffs purchased the suit property.

Learned Trial Court has therefore opined that the decree which is passed in Special Civil Suit No. 137/1992 leading to filing of Darkhast Application for execution of said decree would be binding on the Plaintiffs and therefore Exh. 5 Application has been rejected.

5. Mr. Kumbhakoni would vehemently argue that the said finding as returned is *prima facie* incorrect in view of the averments made in the registered sale deeds, *inter alia*, pertaining to subject property in favour of the Plaintiffs. This gives rise to disputed questions of facts. Though Mr. Kumbhakoni would submit that his immediate concern would be to seek injunctive relief against the Defendant from creating third party rights, such a relief can only be granted during pendency of the Suit proceedings after ascertaining the correct position, *inter alia*, pertaining to the status of the subject property as also execution proceedings i.e. Darkhast proceedings No. 44/2010.

6. In view of the above, arguable case is made out by Mr. Kumbhakoni for issuance of notice. Hence, issue notice to the Respondents made returnable on 07.05.2026. Humdast permitted. In addition to Court's notice, Appellants are directed to serve copy of the A.O. and Interim Application along with copy of this order on the Respondents and inform them about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof on or before the next date.

7. After receiving the notice, Respondents to file affidavit-in-reply within a period of two weeks from today with an advance copy to the Advocate for Appellants. Rejoinder if any shall be filed within one week thereafter.

8. Stand over to **7th May, 2026**.

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[MILIND N. JADHAV, J.]

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